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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,581	02/26/2004	Konstantin Othmer	15814.16	3412
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Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111				
EXAMINER				
SING, SIMON P				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
06/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/789,581

Applicant(s)

OTHMER, KONSTANTIN

Examiner

SIMON SING

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28, 29, 52 and 54-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28, 29, 52 and 54-58 is/are allowed.
- 6) ☒ Claim(s) 59-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 59-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view Chaturvedi et al US 7,043,266.

1.1 Regarding claims 59 and 63, Dietz discloses a mobile phone 100 in figure

1. Dietz teaches:

receiving and buffering voice data received at the mobile phone while a user's ear is away from mobile phone;

playing the voice data being received (it is obvious if not inherent, that voice data received continue to be played at the speaker, or earpiece);

receiving an input (user moves the mobile phone back to his ear) from the user to replay the buffered voice data in memory; and

replaying the voice data buffered in memory while continuing to buffer further received voice data (second voice data) until the playback catches up with real-time voice data received (both first and second voice data played) (para.

0006, 0016 and 0017).

Dietz fails to teach providing in a network based instant connect call.

However, Chaturvedi discloses network based instant connect call in figure 1. Chaturvedi teaches a normal mode and a push to talk (PTT) mode (instant connect mode) for mobile stations 12 and 14 (column 5, lines 24-27; column 6, lines 28-64; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teaching Chaturvedi so that the mobile phone 100 would have comprised a PPT mode, because such a modification would have enabled a user to communicate in different communication modes using a single device since the buffering and replaying steps were applicable in all types of call.

1.2 Regarding claims 60 and 64, Dietz teaches playing the first voice data and then the second voice data (para. 0017).

1.3 Regarding claims 61, 62, 65 and 66. Dietz teaches a mobile phone 100 and mobile communications (para. 0012).

Allowable Subject Matter

2. Claims 28, 29, 52 and 54-58 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Independent claim 28: Dietz teaches playing and buffering real time voice data when a mobile phone is away (de-coupling) from a user's ear, and playing the buffered data (first voice data) while continue to buffer real time received voice data (second voice data). Dietz teaches a speed up playing until catches up with real time voice data. Dietz further teaches removing silence in received voice data. Dietz fails to teach jumping back to real time voice data while playing buffered voice data when a user speaks or requests a floor.

Independent claims 52 and 57: Harris teaches inserting missing voice data in a buffer and playing back all voice data, in a delay mode, automatically to a user in push-to-talk mode of wireless communications. Harris fails to teach playing voice data as received without the missing voice data, and in response to a user input, playing back all voice data including the inserted missing voice data.

Response to Arguments

3. Applicant's arguments with respect to claims 59-66 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2614

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Simon Sing whose telephone number is 571-272-7545. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

/Simon Sing/

Primary Examiner, Art Unit 2614

06/01/2009